IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 18-07-2007

CORAM

THE HONOURABLE MR.JUSTICE S.PALANIVELU

C.M.A.No.680 OF 2002

New India Assurance Company Ltd.,
Chennai. ...Appellant/2nd Respondent

-vs-

1.L.Sunderarajan
2.S.Muthu Pandian ...Respondents(Petitioners & 1st Respondent)

Appeal against the award and decree, dated 26.09.2001, made in MACT O.P.No.2219 of 1998, on the file of Motor Accident Claims Tribunal (IV Judge, Court of Small Causes), Chennai.
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For appellant : Mr.M.Krishnamoorthy for Mr.R.Vedantham
For 1st Respondent : No appearance

J U D G M E N T

Insurance Company has filed this appeal, aggrieved over the award, made in MACT O.P.No.2219 of 1998, on the file of Motor Accident Claims Tribunal (IV Judge, Court of Small Causes), Chennai, awarding a sum of Rs.30,300/-., for the injuries sustained by first respondent.

2. When this matter came up for hearing on two occasions, there was no representation for the respondents. Hence, the matter was directed to be posted today for orders.

3. Claimant, first respondent herein, lodged a complaint with regard to the accident. He had stated therein that on 17.10.1997 at about 08.15 a.m., while he was going on a Sunny scooter, bearing registration No.TN 09 X 7209 with his daughter-in-law as a pillion rider along M.M.D.A.Colony in Arumbakkam, a van, bearing registration No.TSL 3507, driven by its driver in a rash and negligent manner, came from behind and dashed against the said two wheeler, causing injuries to the duo.

4. As far as the negligence on the part of the driver is

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concerned, it has been established before the Tribunal by a circumstance that he admitted the offence before a criminal court and paid a fine of Rs.750/-.

5. The award receives a scathing attack from the side of the appellant, contending that at the time of accident, the van, belonging to second respondent, was not at all under insurance coverage with the appellant.

6. The accident took place at 08.15 a.m. on 17.10.1997. It is worthwhile to note that after a span of just about 2 ¼ hours i.e., at 10.30 a.m. on the same day, the vehicle was insured with the appellant by second respondent, to wriggle out from the responsibility of paying compensation to the claimants.

7. Ex.R-1, insurance policy, was produced by the appellant insurance company before the Tribunal and it is a sorry state of affair to note that the Tribunal had not even referred to the presence of Ex.R-1 in case records. It woefully failed to appreciate the documentary piece of evidence, very much available in case bundle. The said document Ex.R-1 was marked and proved through R.W.1, who was Assistant Manager in the appellant company. When Ex.R-1 was produced before the court, it was incumbent upon the second respondent/owner of the vehicle to put forth his contention with regard to the aspect that at the time of accident i.e., at 08.15 a.m. on 17.10.1997, his vehicle was under insurance. But, he ignored both the forums viz., the Tribunal and this Court conveniently, attempting to shift the responsibility on the appellant.

8. It is not out of place to mention here that in Ex.R-1, it is stated that policy is effective from 10.30 a.m. on 17.10.1997 to midnight of 16.10.1998.

9. While referring to the above said feature, learned counsel for the appellant draws attention of this Court to a Division Bench decision of this Court in *National Insurance Co.Ltd.* v. *N.Ponnaiyan and others*, 2005 ACJ 1103, wherein, it is held as follows :

> "6. We have already referred to the fact that in Exh.R-2, insurance policy, it is specifically mentioned that the policy shall come into effect on 12.7.1991 from 7.15 p.m. onwards. In such a circumstance, in the light of the specific reference to the time, as interpreted by the Supreme Court in the above referred decision, we hold that as per the insurance policy Exh.R-2, the coverage would be operative from that time i.e., 7.15 p.m. and not from the previous midnight as observed and

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> stated in earlier decisions. Accordingly, insurance company cannot be mulcted with liability as ordered by the Deputy Commissioner. Consequently, the contrary conclusion arrived at by him directing the insurance company to deposit the compensation is liable to be set aside."

10. From the above said decision, it is crystal clear that when there is no insurance coverage for the relevant time of accident, the insurance company would not, in any event, be fastened with liability of paying compensation to the claimant. The attitude of the Tribunal, in this regard, is highly deprecated.

11. At the time of making a proposal for insurance, owner of the vehicle knew full well that the accident already took place and deliberately concealed the factum of accident. As such, the non-disclosure of material fact has rendered the policy void *ab initio*. The insurance company is not liable to indemnify the vehicle owner in the case of suppressing the material fact, while taking the policy. The vehicle owner, after receiving information about the accident, in order to escape from the responsibility of making good the loss to the claimant, immediately rushed to the insurance company and took a policy. While resorting to this nature of attitude by a vehicle owner, the Court has to come down heavily.

12. Therefore, award passed by the Tribunal is modified to the effect that the compensation of Rs.30,300/-, fixed by the Tribunal, is directed to be paid by the owner of the vehicle/second respondent with costs. In addition to costs of this appeal, second respondent is also directed to pay exemplary costs of Rs.25,000/- to the appellant, within a period of eight weeks from the date of receipt of a copy of this order.

13. Appeal is allowed on the above lines.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1.The Registrar Court of Small Causes,
Chennai.

2.The IV Judge, Court of Small Causes,
(Motor Accident Claims Tribunal)
Madras.

3. The Record Keeper,
VR Section, High Court, Madras.

+1cc to Mr.M.Krishnamoorthy, Advocate Sr 44214

JRG (CO)
km/25.10.

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